

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**CIVIL CONFERENCE
MINUTE ORDER**

BEFORE: A. KATHLEEN TOMLINSON
U.S. MAGISTRATE JUDGE

DATE: 6-21-2018
TIME: 11:45 a.m. (54 minutes)

McDevitt v. Suffolk County, et al.
CV 16-4164 (JFB)(AKT)

TYPE OF CONFERENCE: **SHOW CAUSE HEARING**

APPEARANCES: Plaintiff: Cory H. Morris

Defendants: Kyle O. Wood (Suffolk County defendants)
John and Jane Does # 1-10

ADDITIONAL APPEARANCES:

Plaintiff Michael McDevitt

Non-party Brittany Barton and her attorney David Adhami

Non-party Wayne Schneider - **NO APPEARANCE**

FTR: 11:45-12:39

SCHEDULING:

This case is set down for a Telephone Status Conference on September 4, 2018. Counsel are directed to call into the Court's teleconference number at 866-590-5055 and to use access code: 9720458.

THE FOLLOWING RULINGS WERE MADE:

1. Non-party witness Wayne Schneider failed to appear today in violation of this Court's June 1, 2018 Order to Show Cause. DE 56. Plaintiff's counsel has not had any contact with Mr. Schneider beyond serving him with the subject subpoena. The Court will take further action with respect to Mr. Schneider in a separate Order which will be posted on ECF.
2. Non-party witness Brittany Barton appeared today along with her counsel, David Adhami, Esq. Attorney Adhami stated that he has advised his client regarding her duties and obligations and that she will cooperate with Defendants' counsel with regard to her deposition. All counsel agreed today that the deposition will take place on the afternoon of July 26, 2018. The Court directed that the deposition be designated a "Court-ordered" deposition, and as such, no adjournments or cancellations are permitted without advance authorization from the Court. The Court cautioned Ms. Barton that it is imperative she appear at that deposition and that a failure to do so will result in further action by the Court.
3. All fact depositions in this case must be completed by August 24, 2018.
4. Plaintiff's counsel stated that he filed a motion to compel just this morning which the Court obviously had no opportunity to review. In an effort to avoid further delay, the Court reviewed the outstanding disputes with the parties and made the following rulings:

- a. Plaintiff's desire to obtain the criminal court files of non-parties Brittany Barton and Michael Salamone is not the responsibility of the defendants. Counsel needs to process unsealing orders through the state criminal court.
- b. Plaintiff's counsel asserted that there are audio files involving Defendant Tarquinio that have not been turned over. Defendants' counsel stated that these files were already turned over but that he would check his files and supplement his response if need be. The Court directed counsel to do so within 14 days.

Plaintiff's counsel also stated that the audio files for other officers who are non-party witnesses are likewise outstanding. The Court directed Defendants' counsel to supplement his response within 14 days.

- c. Plaintiff's counsel also stated he had not received GPS records for the patrol vehicles which arrived at the subject property. Defendants' counsel responded that this information as well as radio transmissions had already been provided. The parties were directed to confer after today's conference so that Plaintiff can identify the responsive materials that he says have not been turned over to him.
- d. Plaintiff's counsel believes he is entitled to certain information related to a prior federal action against Defendant Sanchez. Since this information falls outside the five-year period for discovery which the Court previously set, counsel was advised that he needs to file a letter motion explaining why he is entitled to such information if he wishes to pursue this matter. Counsel must set forth case law in support of his position. Defendants' counsel will thereafter have three days to respond.

In light of these rulings, the Court is deeming moot counsel's June 21, 2018 motion to compel.

- 5. Plaintiff's does not intend to introduce any experts in this case other than his client's treating physician. Counsel for Defendants will notify the Court once the fact depositions have been completed whether defendants intend to conduct an IME of Plaintiff. Defendants do not intend to introduce any other expert witness.
- 6. The Court set this case down for a telephone status conference on September 4, 2018 at 10:30 a.m. The parties are directed to use the Court's dial-in number, 866-590-5055, and access code 9720458.

SO ORDERED

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge